

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BRYCE LANEAR,)
Plaintiff,)
vs.)
PHELPS COUNTY JAIL, et al.,)
Defendants.)
Case No. 4:24-cv-629-JMB

MEMORANDUM AND ORDER

This matter is before the Court on the motion of self-represented plaintiff Bryce LaNear for leave to commence this civil action without prepayment of the required filing fee. ECF No. 4. Having reviewed the motion and the financial information submitted in support, the Court has determined that plaintiff lacks sufficient funds to pay the entire filing fee, and will assess an initial partial filing fee of \$19.63. *See* 28 U.S.C. § 1915(b)(1). Additionally, for the reasons discussed below, the Court will direct plaintiff to submit an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to his account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court

each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid.

Id.

In support of his motion for leave to proceed *in forma pauperis*, plaintiff submitted a copy of his certified inmate account statement. ECF No. 5. A review of plaintiff's account from the relevant period indicates an average monthly deposit of \$98.17 and an average monthly balance of \$4.91. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$19.63, which is 20 percent of plaintiff's average monthly deposit.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts but need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that “if the essence of an allegation is discernible,” the Court should “construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even self-represented complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules in order to excuse mistakes by those who proceed without counsel. *See McNeil v. United States*, 508 U.S. 106, 113 (1993).

The Complaint

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 against the Phelps County Jail and Jail Administrator Lt. Taylor in his official and individual capacities. ECF No. 1. Plaintiff’s statement of claim is as follows in its entirety:

Phelps County Jail and Jail Administrator Lt. Taylor used their position to take away inmates ability to learn or educate themselves in any way through reading materials due to the post card only mail policy. No inmate can order books or magazines while in this facility and for federal inmates that means going years without. This policy is a de facto total ban on publishers communicating with inmates.

Id. at 4. Plaintiff leaves the section to state his injuries blank. *Id.* at 6.

For relief, plaintiff seeks “a permanent injunction and \$25,000.00 in damages.” *Id.*

Discussion

Having carefully reviewed and liberally construed plaintiff's allegations, and for the reasons discussed below, the Court finds the complaint is subject to dismissal. However, in light of plaintiff's self-represented status, the Court will provide him with an opportunity to submit an amended complaint to cure his pleading deficiencies.

Plaintiff's claims against the Phelps County Jail are subject to dismissal. It is well-established that "county jails are not legal entities amenable to suit." *Owens v. Scott Cty. Jail*, 328 F.3d 1026, 1027 (8th Cir. 2003). *See also Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (stating that "departments or subdivisions" of local government are not "juridical entities suable as such"); *De La Garza v. Kandiyohi Cty. Jail*, 18 F. App'x 436, 437 (8th Cir. 2001) (affirming district court dismissal of county jail and sheriff's department as parties because they are not suable entities). Defendant Phelps County Jail cannot proceed in this action because it is legally frivolous.

Plaintiff also brings this action against Jail Administrator Lt. Taylor in his official and individual capacities. Naming a government official in his official capacity is the equivalent of naming the government entity that employs the official. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). *See also Kelly v. City of Omaha, Neb.*, 813 F.3d 1070, 1075 (8th Cir. 2016) (stating that a "plaintiff who sues public employees in their official, rather than individual, capacities sues only the public employer"); *Elder-Keep v. Aksamit*, 460 F.3d 979, 986 (8th Cir. 2006) (stating that a "suit against a public official in his official capacity is actually a suit against the entity for which the official is an agent."). An official capacity suit is a "way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165

(1985). Plaintiff alleges Lt. Taylor is an employee of the Jail. As discussed above, the Jail is not a distinctly suable entity. Thus, plaintiff's official capacity claim against Lt. Taylor, as an employee of the Phelps County Jail, is subject to dismissal. *See Owens v. Stoddard Cnty. Jail*, 2022 WL 3585609, at *3 (E.D. Mo. Aug. 22, 2022) (dismissing claims against Carl Hefner in his official capacity because “official capacity claims against Hefner are the equivalent of claims against his employer” and the Stoddard County Sheriff’s Department is not an entity that can be sued under § 1983”).

To the extent plaintiff can be understood to identify Lt. Taylor as a municipal employee (e.g., an employee of the County), his official capacity claim still fails because the complaint is devoid of any allegations against the municipality itself. Unlike a Sheriff’s Office or Jail, a local governing body such as Phelps County can be sued directly under 42 U.S.C. § 1983. *See Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). To prevail on this type of claim, the plaintiff must establish the governmental entity’s liability for the alleged conduct. *Kelly v. City of Omaha, Neb.*, 813 F.3d 1070, 1075 (8th Cir. 2016). Such liability may attach if the constitutional violation resulted from (1) an official *municipal* policy, (2) an unofficial *municipal* custom, or (3) a deliberately indifferent failure to train or supervise. *Mick v. Raines*, 883 F.3d 1075, 1079 (8th Cir. 2018). *See also Marsh v. Phelps Cty.*, 902 F.3d 745, 751 (8th Cir. 2018) (recognizing “claims challenging an unconstitutional policy or custom, or those based on a theory of inadequate training, which is an extension of the same”).

Here, plaintiff provides no allegations that Phelps County *itself* has an unconstitutional policy or custom that makes it liable for the alleged violations of his constitutional rights. Indeed, there is no mention whatsoever of any County policy or custom in the complaint. Phelps County

itself is not mentioned in the statement of the claim. Therefore, plaintiff's official capacity claim against defendant Lt. Taylor is subject to dismissal. *See Ulrich v. Pope Cty.*, 715 F.3d 1054, 1061 (8th Cir. 2013) (affirming district court's dismissal of *Monell* claim where plaintiff "alleged no facts in his complaint that would demonstrate the existence of a policy or custom" that caused the alleged deprivation of plaintiff's rights).

As to Lt. Taylor in his individual capacity, plaintiff must allege facts connecting the defendant to the challenged action. *See Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege defendant was personally involved in or directly responsible for incidents that injured plaintiff); *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995) (respondeat superior theory inapplicable in § 1983 suits); *Keeper v. King*, 130 F.3d 1309, 1314 (8th Cir. 1997) (noting that general responsibility for supervising operations of prison is insufficient to establish personal involvement required to support liability under § 1983). A federal complaint must contain the 'who, what, when and where' of what happened, and each defendant must be linked to a particular action." *Drummer v. Corizon Corr. Health Care*, 2016 WL 3971399, at *1 (E.D. Mo. July 25, 2016).

Here, plaintiff has not described the instances when, if at all, Lt. Taylor personally denied plaintiff the opportunity to receive reading materials through the mail. While plaintiff's Statement of Claim alleges that defendants have generally prevented inmates from ordering books, he does not provide any factual support describing when he was personally affected by the alleged "postcard only mail policy." Plaintiff cannot bring claims on behalf of other inmates, but must allege a personal loss. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

Instructions on Amending the Complaint

Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and so it must include all claims plaintiff wishes to bring. *See In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005) (“It is well-established that an amended complaint supersedes an original complaint and renders the original complaint without legal effect”). Plaintiff must type or neatly print the amended complaint on the Court’s prisoner civil rights complaint form, which will be provided to him. *See E.D. Mo. L.R. 45 – 2.06(A)* (“All actions brought by self-represented plaintiffs or petitioners should be filed on Court-provided forms”).

In the “Caption” section of the amended complaint, plaintiff must state the first and last name, to the extent he knows it, of each defendant he wishes to sue. *See Fed. R. Civ. P. 10(a)* (“The title of the complaint must name all the parties”). Plaintiff must avoid naming anyone as a defendant unless that person is directly related to the claim(s). Plaintiff must also specify whether he intends to sue each defendant in his or her individual capacity, official capacity, or both.

In the “Statement of Claim” section, plaintiff should begin by writing the defendant’s name. In separate, numbered paragraphs under that name, plaintiff should set forth a short and plain statement of the facts that support his claim or claims against that defendant. *See Fed. R. Civ. P. 8(a)*. Each averment must be simple, concise, and direct. *See id.* Plaintiff must state his claims in numbered paragraphs, and each paragraph should be “limited as far as practicable to a single set of circumstances.” *See Fed. R. Civ. P. 10(b)*. If plaintiff names a single defendant, he may set forth as many claims as he has against that defendant. *See Fed. R. Civ. P. 18(a)*. If plaintiff names more

than one defendant, he should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See Fed. R. Civ. P. 20(a)(2).*

It is important that plaintiff allege facts explaining how each defendant was personally involved in or directly responsible for harming him. *See Madewell*, 909 F.2d at 1208. Plaintiff must explain the role of the defendant, so that the defendant will have notice of what he or she is accused of doing or failing to do. *See Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014) (stating that the essential function of a complaint “is to give the opposing party fair notice of the nature and basis or grounds for a claim.”). If plaintiff intends to bring a claim against Phelps County, he must provide non-conclusory allegations that Phelps County itself has an unconstitutional policy or custom that makes it liable for the alleged violations of his constitutional rights.

Furthermore, the Court emphasizes that the “Statement of Claim” requires more than “labels and conclusions or a formulaic recitation of the elements of a cause of action.” *See Neubauer v. FedEx Corp.*, 849 F.3d 400, 404 (8th Cir. 2017). Plaintiff must not amend a complaint by filing separate documents. Instead, she must file a single, comprehensive pleading that sets forth her claims for relief.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed *in forma pauperis* [ECF No. 4] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff must pay an initial partial filing fee of \$19.63 within thirty (30) days of the date of this order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison

registration number; (3) the case number; and (4) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff two blank Prisoner Civil Rights Complaint forms. Plaintiff may request additional forms as needed.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint on the Court's form within **thirty (30) days** of the date of this Order. Plaintiff is advised that his amended complaint will take the place of his original complaint and will be the only pleading that this Court will review.

IT IS FURTHER ORDERED that if plaintiff fails to timely comply with this Memorandum and Order, the Court will dismiss this action without prejudice and without further notice.

Dated this 19th day of July, 2024.

/s/ *John M. Bodenhausen*
JOHN M. BODENHAUSEN
UNITED STATES MAGISTRATE JUDGE